



US Army Corps
of Engineers
Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Public Notice

Public Notice Number: SPK-2008-00117

Date: February 19, 2008

Comments Due: March 20, 2008

In reply, please refer to the Public Notice Number

TO WHOM IT MAY CONCERN:

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District, (Corps) is soliciting comments on the proposed reissuance of **Regional General Permit (RGP) number 057**, for projects that are beneficial to the recovery of the Colorado River endangered fish species (**Recovery Program for the Endangered Fishes of the Upper Colorado**). This permit, which expires on May 15, 2008, would be issued under the authorities of Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 403). Any project authorized under this permit prior to the expiration date of the existing RGP shall have an automatic extension of one additional year for completion of the project. A copy of the proposed regional general permit is enclosed. This notice is to inform interested parties of the proposed activity and to solicit comments. This notice may also be viewed at the Corps web site at <http://www.spk.usace.army.mil/regulatory.html>.

AUTHORITY: This proposed permit reissuance is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States and/or Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States.

LOCATION: This regional general permit would be applicable to jurisdictional waterways, abutting and adjacent wetlands within Colorado and Utah which are within the boundaries of the Sacramento District and are currently designated or classified by the U.S. Fish and Wildlife Service (FWS) as "critical" and/or occupied habitat of the Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), humpback chub (*Gila cypha*) or bonytail chub (*Gila elegans*). The regional general permit may include additional waters of the United States not currently designated or classified as critical and/or occupied if projects within these waters may have an appreciable beneficial effect on recovery of any of the endangered fish species. Waters recognized by the Corps of Engineers as habitat occupied by the Upper Colorado River endangered fish species are listed in the enclosed copy of the proposed regional general permit.

SCOPE OF WORK: Refer to the enclosed copy of the proposed regional general permit.

ADDITIONAL INFORMATION:

OTHER GOVERNMENTAL AUTHORIZATION: In the State of Colorado, water quality certification under Section 401 of the CWA is certified by statute. Pursuant to CRS 25-8-301 (1)(f), regional general and nationwide general permits under Section 404 of the CWA and Section 10 of the RHA are certified without additional best management practices or other conditions. Further action on general permits by the applicant or the State of Colorado, Department of Health, Water Quality Control Division is not required.

If your comments concern certification on Tribal lands located in Colorado or Utah, please contact the U.S. Environmental Protection Agency (EPA-EP), 1595 Wynkoop Street, Denver, Colorado 80202-1129 on or before the comments due date of this public notice.

Written comments on water quality certification in Utah should be submitted to Shelly Quick, Utah Division of Water Quality, Post Office Box 144870, Salt Lake City, Utah 84114-4870 on or before the comments due date of this public notice.

HISTORIC PROPERTIES: The latest published version of the National Register of Historic Places and its monthly supplements will be reviewed for each project proposed for authorization under this regional general permit. A determination will be made as to whether places either listed or recommended as eligible would be affected and whether further cultural review is warranted.

ENDANGERED SPECIES: Activities authorized under this RGP may affect threatened and endangered species or critical habitat. Each individual permit application will be evaluated for potential effects to listed species or critical habitat and consultation initiated on a case-by-case determination.

ESSENTIAL FISH HABITAT: The proposed project will not adversely affect Essential Fish Habitat (EFH) as defined in the Magnuson-Stevens Fishery Conservation and Management Act.

EVALUATION FACTORS: The decision whether or not to reissue RGP 057 will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SUBMITTING COMMENTS: Written comments, referencing Public Notice SPK-2008-00117 must be submitted to the office listed below on or before the comments due date of this public notice.

Ken Jacobson
U.S. Army Corps of Engineers, Sacramento District
Colorado West Regulatory Branch
400 Rood Avenue, Room 142
Grand Junction, Colorado 81501-2563
Email: ken.jacobson@usace.army.mil

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant or the Corps' project manager Ken Jacobson, (970) 243-1199 extension 11, e-mail ken.jacobson@usace.army.mil.

Enclosure: RGP 057

PROPOSED

REGIONAL GENERAL PERMIT NUMBER 057
PROJECTS BENEFICIAL TO THE RECOVERY OF
THE UPPER COLORADO ENDANGERED FISH SPECIES

EFFECTIVE DATE:

EXPIRATION DATE:

In accordance with Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) the District Engineer, U.S. Army, Corps of Engineers, Sacramento District, hereby authorizes certain discharges of dredged and fill material associated with projects beneficial to the recovery of the Upper Colorado Endangered Fish Species. This Regional General Permit is applicable to any Federal, state or local government agency, quasi-public agency, conservancy group, private interest group or individual(s) with a project that is beneficial to the "Recovery Program for the Endangered Fishes of the Upper Colorado," as determined by the U.S. Fish and Wildlife Service.

Location: This Regional General Permit (RGP) is applicable to waterways and adjacent wetlands in the states of Colorado and Utah within the boundaries of the Sacramento District, Corps of Engineers. This area encompasses all waterways and adjacent wetlands currently occupied or susceptible to occupation by the Upper Colorado Endangered Fish Species in the states of Colorado and Utah. In accordance with the Endangered Species Act (16 U.S.C. et.seq.) and after discussion with the U.S. Fish and Wildlife Service, The Corps of Engineers, Sacramento District identifies the following waters as critical or occupied habitat for the Colorado pikeminnow (Phychocheilus lucius), razorback sucker (Xyrauchen texanus), humpback chub (Gila cypha) or bonytail chub (Gila elegans) [Refer to the attached map]:

1. The **YAMPA RIVER** from the Green River confluence to the Town of Hayden, Colorado at the confluence of Dry Creek.
2. The **GREEN RIVER** from Browns' Park to the confluence with the Colorado River.
3. The **DUCHESNE RIVER** from river mile 15.0 to the confluence with the Green River.
4. The **PRICE RIVER** from river mile 37.8 to the confluence with the Green River.
5. The **SAN RAFAEL RIVER** from Utah state highway 24 bridge to the confluence with the Green River.
6. The **COLORADO RIVER** from Lake Powell to the Colorado state highway 13 bridge at the City of Rifle, Colorado.
7. The **GUNNISON RIVER** from the confluence with the Colorado River to the Hartland dam near the City of Delta, Colorado.
8. The **WHITE RIVER** from the confluence with the Green River to the Colorado state highway 13 bridge near the Town of Meeker, Colorado.
9. The **SAN JUAN RIVER** from Lake Powell to the New Mexico state line.
10. The **LITTLE SNAKE RIVER** from the confluence with the Yampa River to the Wyoming state line.

NOTIFICATION AND APPROVAL PROCEDURES: Anyone proposing to perform work authorized by this permit must provide the following information to the Corps of Engineers prior to commencing work in waters of the United States:

1. The name, address, and telephone number of the applicant responsible for the work and the owner of the affected property, if other than the applicant.

2. A written description of the proposed work including the purpose and need; composition and volume of dredged and fill material; dimensions of fills or structures; disposal site for material, types and numbers of equipment to be used; a wetland delineation in accordance with Corps of Engineers methodology, if wetlands are involved; direct and indirect adverse environmental effects of the activity; and any other pertinent or supporting data.
3. A written legal description of the project location including: section, township and range. If known, include the UTM coordinates or latitude and longitude of the project site.
4. The names, addresses, and telephone numbers of adjacent property owners.
5. A complete set of drawings with dimensions of the proposed project which includes the following:
 - a. The project location, including the fill sites and disposal site locations. A photocopied excerpt from a USGS quadrangle, county road map or equivalent is acceptable.
 - b. A plan or top view of the project site clearly depicting structures and fill sites.
 - c. Typical cross-section or end views of all structures and fill.

The drawings should be prepared on 8½-inch by 11½-inch bond paper, and include all pertinent dimensions such as height, width, length and depth. A bar scale should be included with each drawing.

6. If the project is located on Tribal Lands, you must obtain "water quality certification" under Section 401 of the CWA from the U.S. Environmental Protection Agency (EPA). For assistance concerning water quality certification on Tribal Lands, contact EPA, (EPR-EP), Wetlands and Watersheds Unit, U.S. Environmental Protection Agency, Region VIII, 1595 Wynkoop, Denver, Colorado 80202-1129.

7. If a project (located in Utah) causes water turbidity in adjacent surface waters to increase by 10 Nephelometric Turbidity Units (NTU), or causes Total Suspended Solids concentrations in an adjacent surface water to exceed 35 milligrams/liter (mg/l) or 90 mg/l for a Class 3A-Cold Water Fishery or a Class 3B-Warm Water Fishery, respectively, the Utah Division of Water Quality shall be contacted. The contact address is: Utah Division of Water Quality, 288 North 1460 West, Post Office Box 144870, Salt Lake City, Utah 84114-4870, telephone number (801) 528-6146.

Your written notification requesting approval under this RGP must include a completed Application for a Department of the Army permit (ENG FORM 4345), or equivalent. Please contact the following Corps of Engineers office to ensure that your application, supporting information and drawings are submitted to the correct regulatory field office:

NW and Central Colorado; Daggett, Uintah, Grand Counties, Utah	Corps of Engineers, Sacramento District Colorado West Regulatory Branch 400 Rood Avenue, Room 142 Grand Junction, Colorado 81501-2563 Telephone (970) 243-1199
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SW Colorado; San Juan County, Utah:	Corps of Engineers, Sacramento District Durango Regulatory Office 799 East 3rd Street, Suite 202 Durango, Colorado 81301 Telephone (970) 375-9531
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**Remainder
of Utah:**

**Corps of Engineers, Sacramento District
Nevada and Utah Regulatory Branch
533 West 2600 South, Suite 150
Bountiful, Utah 84010-7744
Telephone (801) 295-8380**

Within 30 days of receiving a complete written notification, the Corps of Engineers under normal circumstances, will review your proposal and inform you in writing, if the project may proceed under the authorization given in this RGP. Projects located within the State of Utah must be coordinated with the Utah Division of Water Resources prior to authorization under the RGP. You may not proceed with your project until notified by the Corps of Engineers. If you proceed without approval by the Corps of Engineers, you may be subject to penalties under the law.

SCOPE OF WORK: The Corps of Engineers regulates the discharge of dredged and fill material in waters of the United States under Section 404 of the Clean Water Act and various work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act. The Corps of Engineers has the authority to issue regional general permits for activities that are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. This RGP covers the discharges of dredged and fill material associated projects in waters of the United States within Colorado and Utah which have minimal environmental effects and are beneficial to the recovery of the Upper Colorado Endangered Fish Species. This includes, but is not limited to fills and structures associated with the following projects, contingent upon the concurrence of the owner or proprietor of the affected project site:

1. Breaching or removal of levees, dikes, berms, riprap or other fills that are barriers to fish movement.
2. Construction of levees, dikes, berms, and placement of riprap to inhibit fish movement or protect habitat.
3. Excavation of channels from flood plain depressions, ponds, abandoned gravel pits, lakes or wetlands to the active channel of a stream to facilitate fish movement.
4. Development of controlled floodplain backwater facilities for experimental manipulation, including inlet and outlet works and in-stream elevation control structures.
5. Construction of placement of fish screens, fish harvest kettles, pump station facilities, scientific measurement devices and fill barriers.
6. Isolation of backwater areas to facilitate eradication or prevention of non-native fish species escapement.
7. Excavation of sediments to improve storage capacity, drainage, or fish collection.
8. Construction of road access and boat launch and retrieval facilities.
9. Construction of fish passageways or ladders, hatcheries, other propagation facilities and refugia ponds.
10. Maintenance and/or rehabilitation of fills and structures appurtenant or functionally related to the above-mentioned activities.

Any project authorized by this RGP may not cause the loss of more than 0.5 acre of wetlands. Changes in wetland type due to project implementation will be given favorable consideration in determining wetland impact acreage. The impact acreage limitation includes loss of wetlands due to the discharge of dredged or fill material, plus any wetlands that are adversely affected by flooding or draining as a result of the project. The Corps of Engineers may authorize impact to more than 0.5 acre of wetland if the project complies with the other terms and conditions of the permit and the adverse environmental impacts are minimal. Authorization of impacts to wetlands in excess of 0.5 acre will only be considered after coordination with

other Federal and state agencies. The Corps of Engineers evaluation may determine that wetland mitigation is required for any project, and may add special conditions to ensure that environmental impacts are minimal.

THIS REGIONAL GENERAL PERMIT IS SUBJECT TO THE FOLLOWING GENERAL CONDITIONS:

1. Upon notification from the Corps of Engineers that work being performed does not comply with the scope of work or conditions of the permit, the responsible party shall take immediate steps, as directed by the Corps of Engineers, to bring the work into compliance with this RGP.
2. This permit does not authorize any damage to existing bank stabilization work which could cause accelerated erosion or unstable effects on stream channels.
3. If your project is located on Tribal Lands, Section 401 Water Quality certification provided by the Environmental Protection Agency, must accompany your permit application.
4. All in-stream work shall be performed during low water periods and the use of heavy equipment, especially in flowing water, shall be conducted in a manner to prevent pollution and release of contaminants, and to minimize turbidity and sedimentation.
5. Unless otherwise authorized by the Corps of Engineers, all dredged material in excess of incidental fallback shall be deposited in an upland disposal site, and sufficiently removed and isolated to prevent re-entry into waters of the United States.
6. The discharge of dredged and fill material in waterfowl breeding areas shall be avoided to the maximum extent practicable.
7. The discharge of dredged and fill material in waters of the United States shall be minimized or avoided to the maximum extent practicable unless the District Engineer has approved a compensatory mitigation plan for the specifically regulated activity.
8. Activities authorized under this RGP shall not jeopardize a listed species as identified under the Endangered Species Act, or **destroy or adversely modify** their critical habitat.
9. Activities which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places (Register) are not authorized by this RGP until the Corps of Engineers has complied with the provisions of Title 33, CFR, Part 325, Appendix C. The applicant must notify the Corps of Engineers if the activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the Register. The proposed activities shall not commence until notified by the Corps of Engineers that the requirements of the National Historic Preservation Act have been satisfied and that the activities are authorized. Information concerning the location and existence of historic resources can be obtained from the Colorado or Utah State Historic Preservation Officer, as appropriate.
10. Discharge material shall not consist of unsuitable material in any amount [e.g., trash, debris, bituminous concrete (asphalt), automotive bodies or parts, etc.], and must be free of toxic pollutants in toxic amounts.
11. A discharge shall not occur in proximity to a public water supply unless approval is given by the controlling water provider and all required mitigation measures are implemented to offset adverse effects.
12. Activities occurring in a component of the National Wild and Scenic River system, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, are not authorized by this RGP.

13. A discharge shall not impair or interfere with the ability of any group or individual to exercise the use of an appropriated or decreed water right. An activity may not impair reserved Tribal rights including, but not limited to, reserved water rights and treaty fishing and hunting rights.

14. This RGP does not obviate the need to obtain other Federal, state or local authorizations as required by law, does not grant any property rights or exclusive privileges, does not authorize any injury to the property rights of others, and does not authorize interference with any existing or proposed federal project.

15. In issuing this RGP and giving approval to perform work under this RGP, the Federal government does not assume any liability for damages to the permitted project, or uses thereof, as a result of current or future activities undertaken by or on behalf of the United States in the public interest; damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activities authorized by this RGP; design or construction deficiencies associated with the permitted work; or damage claims associated with any future modification, suspension, or revocation of this RGP.

16. You must allow representatives from the Corps of Engineers to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of this RGP.

17. You must comply with all general conditions, special conditions and any require mitigation measures added by the Corps of Engineers.

18. Within 30 days after project completion, you must provide the Corps of Engineers with a signed statement confirming that the project was performed according to the general conditions of the RGP and any required special conditions or mitigative measures.

19. You must maintain the activities authorized by this RGP in good condition and in conformance with the terms and conditions of this RGP. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party provided you obtain a transfer of this authorization from the Corps of Engineers to the new owner or proprietor.

20. The Corps of Engineers may re-evaluate its decision on any authorization given in accordance with this RGP at any time circumstances may warrant. Circumstances that could require a re-evaluation include, but are not limited to the following:

- a. Your failure to comply with the terms and conditions of the permit.
- b. The information provided by you in support of your application proves to be false, incomplete, or inaccurate.
- c. Significant new information surfaces which the Corps of Engineers did not consider in reaching a decision on your project.

Such re-evaluation may result in a determination that it is appropriate to use the suspension, modification and revocation procedures contained in 33 CFR 327.5 or enforcement procedures contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by the Corps of Engineers, and if you fail to comply with such a directive, the Corps of Engineers may in certain situations (as specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

21. Upon receiving approval to perform work under this RGP, you will have **two (2) years** to complete the work. If additional time is required, you must seek an extension of time from the Corps of Engineers. Your

request for an extension of time must be provided to the Corps at least **60 days** prior to your authorized permit expiration date.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Issued for and in behalf of Colonel Thomas C. Chapman, PE, District Engineer

Ken Jacobson, Chief, Colorado West Regulatory Branch

Date